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No. 87-252

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

GEORGE W. HAMILTON, ET AL.

Petitioners

v.

MORRIS COUNTY, TEXAS, ET AL.

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the district court err in granting summary judgment in light of petitioner's failure to file a timely response to the pending motions for summary judgment?

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The Respondents, Morris County, Texas, *et al.* (collectively "Morris County"), respectfully request that this honorable Court deny the petition for writ of certiorari seeking review of the Fifth Circuit's unpublished opinion in this case.

STATEMENT OF THE CASE

This is an action by petitioners (collectively referred to as "Hamilton") concerning a dispute over the situs of their land, i.e., in which county the property is located. Hamilton filed suit on August 13, 1985. On January 10, 1986, a status conference was held at which time United States District Judge Robert Parker informed Hamilton that there appeared to be no facts precluding judgment for Morris County, but granted Hamilton additional time to present any relevant facts. The district court then entered a scheduling order establishing April 5, 1986, as the deadline for filing motions and April 19, 1986, as the deadline for responding to motions. On April 4, 1986, the Morris County defendants filed their motion for summary judgment. On April 22, 1986, the district

court granted the Titus County defendants leave to file a motion for summary judgment and such motion was filed.

Hamilton's response, pursuant to the scheduling order, was due April 19, 1986. Furthermore, the local rules of the Eastern District of Texas provide that a response to a motion must be filed within ten (10) days of service. Local Rule E.D. Tex. 6(e). These same local rules provide that an oral hearing is within the discretion of the trial judge. Rule 6(g). This local rule is in complete conformity with the provisions of Fed. R. Civ. P. 78, allowing for the determination of motions without oral hearing.

Nevertheless, the district court held a hearing, which Hamilton failed to attend. At that hearing, the district court noted that Hamilton had failed to take the opportunity to present any additional information on his claim as required by the Court's January 10, 1986, order. Accordingly, the court rendered summary judgment.

REASONS TO DENY THE WRIT

Hamilton's overly long petition for writ of certiorari[1] discusses in depth various perceived errors in the unpublished opinion of the Fifth Circuit, but ignores the actual holding of the Fifth Circuit. That court affirmed the district court's summary judgment because Hamilton failed to make any showing of the existence of a fact issue on the essential elements of his case. Slip op. at 1, Appendix to Hamilton's Petition at A-3. Hamilton ignores this holding and argues extensively from his clearly untimely response to the motion for summary judgment. The holdings below were both based on his failure to respond to raise any fact issues. Hamilton

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[1] This Court's Rule 21.4 limits a petition for writ of certiorari to thirty (30) pages. Hamilton's petition is sixty-six (66) pages long.

merely assumes that failing to consider his untimely response was error without presenting this as a question to be decided by this Court.

The Fifth Circuit's holding is in complete accord with this Court's holding on summary judgment in *Celotex Corp. v. Catrett*, 54 U.S.L.W. 4775, 4777 (U.S. June 25, 1986).

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial.

Id. The Fifth Circuit did not decide any of the issues of law asserted by Hamilton in his petition before this Court. The application of the rule announced in *Celotex* to the particular procedural posture of this case does not warrant review in this Court. There is no conflict between the Fifth Circuit's opinion and any opinions by this Court and the peculiar procedural posture of this case does not present an issue of significant public importance.

A. Conflict with *Gomillion v. Lightfoot*, 364 U.S. 339 (1960)

Hamilton asserts that the Fifth Circuit's opinion conflicts with this Court's opinion in *Gomillion*. However, even a cursory examination of the Fifth Circuit's opinion shows that there is no such conflict. Therefore, this Court should deny review. *Cf. Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 392-93 (1923); *Wisconsin Electric Co. v. Dumore Co.*, 282 U.S. 813 (1931).

The Fifth Circuit did not discuss *Gomillion* or Hamilton's diminution in minority voting power theory. This theory was

not advanced in Hamilton's pleadings before the trial court and, in fact, was not presented to the trial court until after summary judgment. Hamilton's complaints in the trial court concerned solely the change in the situs of his property for taxing purposes from one county to another. The question of voting rights was not addressed. Moreover, the evidence before the court shows that none of the petitioners was ever denied the right to vote in Morris County.

B. Supervision of the United States District Court for the Eastern District of Texas

Hamilton's second reason for granting his petition is his assertion that this Court must exercise plenary supervisory jurisdiction over the rulings of the United States District Court for the Eastern District of Texas because said court "consciously aides and abets a serious condition of unequal treatment based on race and previous conditions of servitude." Petition for Writ of Certiorari at 39.

In support of the contention that the United States District Court for the Eastern District of Texas actively participates in racially discriminatory actions, Hamilton cites no evidence except for the summary judgment in this case and the denial of his post-judgment motions. Clearly, this assertion is both meritless and insulting to the six judges of that court.

C. The Continuance

Hamilton argues that his April 15, 1986, motion for continuance should have been granted. Clearly, the trial court's exercise of discretion in this matter is not a matter of significant public importance. Moreover, the motion was filed after the Morris County defendants filed their motion for summary judgment. The motion for continuance does not purport to comply with the requirements of Fed. R. Civ. P.

56(f). Hamilton made no showing as to why the facts he wished to present could not have been presented by affidavit. Moreover, any error in refusing the continuance has been waived because Hamilton did not present this point to the Fifth Circuit.

D. The Questions Are Not Substantial

This controversy arose because of Hamilton's mistaken belief that his land is situated in Morris County. The summary judgment evidence clearly established the opposite. Hamilton is not seeking to change the boundary between these counties but rather is merely seeking damages. This is hardly a controversy worthy of this Court's attention.

E. The Judgment is Correct

The summary judgment evidence established that Hamilton's property is in Titus County. The deposition of R. G. Dougherty establishes this fact. He is a surveyor who surveyed the county boundaries. He recreated the boundary from the original legislative act creating Morris County, retraced the first survey done pursuant to that act, and traced the "Tobin" line, which is the boundary line shown on the most commonly accepted private maps. Each of these three boundary lines shows that Hamilton's property is in Titus County.

The circumstances surrounding the situs controversy were explained by various county officials in deposition and will not be repeated here. *See generally* Deposition of B. W. Skipper at 33-34; Deposition of Jerry Chambliss at 16-19; Deposition of Pat Beck at 12-14, 81. Pat Beck specifically testified that race was not a factor in the determination of the situs of Hamilton's property. Deposition at 78.

Hamilton submitted no evidence to the contrary. Most of the evidence he cites throughout his petition was submitted untimely, after summary judgment was rendered and consists, as noted by the Fifth Circuit, of mere conclusions without factual support.

Moreover, the summary judgment evidence established that Hamilton was aware of the situs controversy as early as 1974 but did not file suit until 1985. Claims under 42 U.S.C. § 1983 are best characterized as personal injury claims and federal courts must look to the most analogous state statute of limitations for all such claims. *Wilson v. Garcia*, 471 U.S. 261 (1985). The appropriate Texas status of limitations is Tex. Civ. Prac. & Rem. Code Ann. § 16.003 (Vernon 1986), which provides a two-year limitation period. *Arquette v. Hancock*, 656 S.W.2d 627, 629 (Tex. App. — San Antonio 1983, writ ref'd n.r.e.). Hamilton's claims were clearly barred by limitations.

Tex. Tax Code Ann. § 41.41 (Vernon Supp. 1986) provides administrative procedures whereby an aggrieved taxpayer can protest the assessment of taxes. Hamilton did not avail himself of this procedure. Therefore, he has not exhausted his available state remedies. *Preiser v. Rodriguez*, 411 U.S. 475 (1973).

CONCLUSION

Hamilton assumed his property was in Morris County. The evidence established it was in Titus County and that there was no improper racial motivation in making this determination. Hamilton failed to respond. Rule 56 mandated that the trial court render judgment for respondents.

There is no conflict between the Fifth Circuit's unpublished opinion and any opinion by this or any other

Court. The determinative issues, summary judgment in the face of no response, are well settled and the Petition does not raise any issues of pressing public importance. Moreover, the judgment is correct. Therefore, this Petition presents no valid basis for this Court's review.

Respectfully submitted,

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